

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
CIVIL CASE NO. 1:21-cv-00344-MR-WCM

CLANT M. SEAY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	<u><b>ORDER</b></u>
	)	
FULCHER'S RED FOX STABLES,	)	
LLC, JESSE RYAN CAHOON,	)	
GREGORY WAYNE MOONINGHAM,	)	
and GARLAND CHRISTOPHER	)	
FULCHER, II,	)	
	)	
Defendants.	)	
	)	

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**THIS MATTER** is before the Court on the Defendants' Notice of Death of Plaintiff [Doc. 74].

On March 14, 2023, the Defendants filed a Notice advising the Court that the *pro se* Plaintiff died on March 6, 2023. [Doc. 74].

Rule 25(a)(1) governs the substitution of the proper successor or representative of a deceased party:

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a

statement noting the death, the action by or against the decedent must be dismissed.

Fed. R. Civ. P. 25(a)(1). “The rule imposes no time limit for the substitution other than that commenced by proper service of a suggestion of death upon the record.” Fariss v. Lynchburg Foundry, 769 F.2d 958, 961-62 (4th Cir. 1985). Where a party is represented by counsel, service of the suggestion of death may be served on that party’s attorney. Id. at 962; Fed. R. Civ. P. 25(a)(3). Nonparties, however, must be personally served in accordance with Rule 4 of the Federal Rules of Civil Procedure. Fariss, 769 at 962; Fed. R. Civ. P. 25(a)(3).

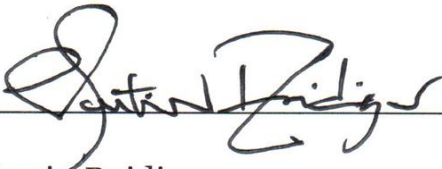
Here, the Defendants fail to identify any successors or representatives of the deceased Plaintiff, and their Notice does not indicate that it was served upon any such persons. As such, the 90-day period for substitution has not yet been triggered. Accordingly, the Court will direct the Defendants to identify any successors or representatives of the deceased Plaintiff and serve their Notice, along with a copy of this Order, on such successors or representatives in order to trigger the 90-day substitution period under Rule 25(a)(1).

Accordingly, **IT IS, THEREFORE, ORDERED** that the Defendants shall identify any successors or representatives of the deceased Plaintiff and

shall, within thirty (30) days of the entry of this Order, serve their Notice, along with a copy of this Order, on such successors or representatives. Once service is completed, the Defendants shall file notice of such service with the Court such that the 90-day substitution period under Fed. R. Civ. P. 25(a)(1) may commence.

**IT IS SO ORDERED.**

Signed: June 19, 2023

  
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Martin Reidinger  
Chief United States District Judge

